IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 87 & 88 of 2006
In
COMPANY APPLICATION No. 188 & 189 of 2006

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SUN PHARMACEUTICAL INDUSTRIES LTD. - Petitioner(s)
Versus
..... - Respondent(s)

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Appearance :
MRS SWATI SOPARKAR for Petitioner(s) : 1,
None for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.S.DAVE

Date : 01/09/2006

ORAL JUDGMENT

1. These are the petitions filed by two petitioner companies for sanction of a scheme of Arrangement in the nature of Demerger and Transfer of Innovative Research and Development Business of Sun Pharmaceutical Industries Limited (the De-merged Company) to Sun Pharma Advanced Research Company Limited (the Resulting Company) under Section 391 read with Section 394 of the Companies Act, 1956.

2. Both the petitioner companies belong to the

same group of management. The De-merged company is a listed public limited company engaged in the manufacturing of pharmaceutical products and also has a huge focus on Research and Development activities. It is one of the fastest growing pharmaceutical company having a very strong financial position. The Resulting company on the other hand is recently incorporated as a wholly owned subsidiary of Sun Pharmaceutical Industries Limited, the De-merged company, with the object of primary focus on Research and Development for pharmaceutical products. The respective petitions give details about the commercial activities and the financial status of both the companies. The de-merger is proposed to achieve the sustained growth and development of both the manufacturing and research activities as independent entities. The petitions give details of the advantages that would flow by virtue of the proposed arrangement between these companies.

3. Vide the order dated 24th April, 2006, separate meetings of the Equity Shareholders Preference Shareholders, Secured Creditors, Unsecured Creditors and Foreign Currency Convertible Bonds (FCCB) of the De-merged Company were Directed and the meeting of the Equity Shareholders of the Resulting Company were dispensed with in view of the consent letters from all the shareholders approving the scheme being put on record. The Equity and Preference Shareholders and Secured and Unsecured creditors of the De-merged Company unanimously approved the scheme in the meeting convened on 6th June, 2006 for the purpose as per the directions issued vide order dated 24.04.2006.

4. After the petitions were admitted, the same were duly advertised in the newspapers (Indian Express and Loksatta-Jansatta Vadodara edition dated 01.07.2006) and the publication in the Government gazette was

dispensed with as directed in the order dated 26.06.2006. No one has come forward with any objections to the said petitions even after the publication.

5. Notice of the petition has been served upon the Central Govt. and Shri P.J.Malkan, Additional Standing Counsel appear for the Central Govt. Shri Malkan has placed on record the affidavit dated 25th August, 2006 filed by the Dy.Registrar of Companies along with the letter from the Regional Director dated 17th August, 2006 vide which the Regional Director has made certain observations. On behalf of the petitioner companies a common affidavit dated 28th August, 2006 is filed by the D.G.M.(Legal & Secretary) of de-merged company and the authorized signatory of petitioner companies explaining the contention of the companies on the issues raised therein.

6. Heard Smt.Swati Saurabh Soparkar, advocate for the petitioner companies. On the first issue raised by Regional Director, she has placed reliance on two earlier Judgments of this High Court, Company Application Nos.41,42 & 43/2005 dated 14.07.2005 and Company Petitions Nos.66, 67/2005, dated 28.07.2005. Considering the present facts and the submission made by learned advocate appearing for the parties and additional affidavit filed by Shri Ashok Bhuta, DGM (Legal and Secretary) of Sun Pharmaceutical Industries Ltd. as stated on oath where it is submitted that issue with regard to non-payment of fees on increase of authorized share capital of de-merged company from Rs.100 Crores to Rs.176.66 Crores is not relevant, I am of the opinion that by oral Judgments dated 14.07.2005 and 28.07.2005 referred to in Para-6 of this order, the said issue is already settled. The learned Company Judge in the above cases has held that no registration charges or stamp duty are

required to be paid on the increased capital of the said company.

7. I have also heard learned advocate Mr.P.J.Malkan for the Central Government. As per submissions made by Shri Malkan, the decision of learned Company Judge as referred to in Para 6 are accepted by the Central Government and no challenge is made against above decision. Thus, there remain no objection to the present scheme by the said clause.

8. With regard to Objections No.2 of the Regional Director is concerned it is submitted and accepted that Sec.77 is not applicable in the present scheme. Attention is drawn to clause 13.2(d) of the Scheme and principle of Single window clearance is pressed in to service. Further, by order dated 24th April, 2006 passed in Company Application No.188/06 in Para 10 of the said

order, the learned Company Judge has already dispensed with procedure prescribed in Section 101(2) and Rules 48 to 65 of the Company Court Rules 1959, in view of the scheme does not involve either a diminution of liability in respect of unpaid share capital or payment of paid up share capital.

9. So far as third objection regarding non-payment of revenue on increase of authorized capital is concerned the principles laid down by this court in earlier decision as referred in Para-6 of this order will be applicable and it cannot be said that the interest of the Government on the above ground is prejudicially affected or not protected. Even with regard to objection No.4 about obtaining approval of R.B.I., in Clause 11.5 of the scheme, it is stated that if and to the extent required, the company will apply for required statutory approvals including approval of R.B.I. and also other concerned

regulatory authorities for the issue and allotment by the resulting company for such equity share.

10. Thus, I am satisfied that the observations made by Registrar of Companies do not survive and the de-merger being in the interest of the members and the creditors is required to be sanctioned by this Court.

11. Further attention is drawn to Part-V Clause 13.1(a) to (d) of the scheme and Para 22 of the Petition which pertain to the reduction of capital in form of utilization of the Securities Premium Account and/or Capital Redemption Reserve Account. It has been contended that the same being consequential in nature and integral part of the scheme, the procedure prescribed under Section 101(2) as well as Rules 48 to 65 were not required to be followed and the same had been dispensed with vide order dated 24th April,

2006.

12. Considering the same, the Prayers in terms of paragraph 25(a) and (b) of Company Petition No.87 and Para 16(a) of Co.Pet. No.88 of 2006 are hereby granted.

13. The petitions are disposed of accordingly. So far as the costs to be paid to the Central Govt. Standing Counsel is concerned, I quantify the same at Rs.3,500/- per petition. The same may be paid to the learned advocate Shri P.J.Malkan.

(ANANT S.DAVE, J.)

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